

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE v. RONALD HAMILTON, SR.

**Appeal from the Criminal Court for Davidson County
No. 2001-B-956 Cheryl A. Blackburn, Judge**

No. M2003-00814-CCA-R3-CO - Filed October 12, 2004

The Defendant, Ron C. Hamilton, Sr., appeals from the trial court's order denying the Defendant's motion to alter or amend judgment. The State filed a motion to affirm the judgment of the trial court by memorandum opinion pursuant to Rule 20, Rules of the Tennessee Court of Criminal Appeals. We grant the State's motion and affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed Pursuant to Rule 20, Tenn. Ct. Crim. App. R.

DAVID H. WELLES, J., delivered the opinion of the court, in which JERRY L. SMITH and THOMAS T. WOODALL, JJ., joined.

Ronald Hamilton, Sr., Pro Se.

Paul G. Summers, Attorney General and Reporter; Braden H. Boucek, Assistant Attorney General; Victor S. Johnson, District Attorney General; and Roger Moore, Assistant District Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

On November 1, 2001, the Defendant pleaded guilty to and was convicted of possession of MDMA, a Schedule I controlled substance, with intent to sell, same being a Class B felony. Pursuant to the plea agreement, additional charges were dismissed and the Defendant was sentenced as a Range I standard offender to nine years in the Department of Correction. The plea agreement also provided that the State recommended that the Department of Correction place the Defendant in the Special Alternative Incarceration Unit, commonly known as "Boot Camp."

On November 13, 2002, the trial court received a letter from the Defendant, postmarked November 8, 2002. In this letter, the Defendant inquired about the status of a "legal motion Rule 35," which he states that he mailed in February, 2002. The letter states that the Department of Correction had determined that the Defendant was medically ineligible for boot camp and he asked

the Court to “help me take care of this matter.” The letter had attached to it a copy of a “motion for reduction or modification of sentence” which appears to have been sworn to by the Defendant on February 20, 2002. Noted on the petition is an indication that it was mailed February 21, 2002. This petition requests that the Court reduce his sentence because the Department of Correction would not allow him in the boot camp program due to “past medical injurys (sic).”

In response to this letter, the trial court entered an order on December 19, 2002 in which she pointed out that the Boot Camp recommendation was only a recommendation to the Department of Correction and that the final decision concerning the recommendation was up to the Department of Correction. The trial court also noted that the court had no record of ever receiving the motion for reduction or modification of the sentence, but that the date of the document clearly indicated that it was filed more than 120 days from the date the sentence was imposed. The Court therefore ruled that the motion was filed after the time limitation for correcting or reducing a sentence pursuant to Rule 35 of the Tennessee Rules of Criminal Procedure.

On January 24, 2003, the Defendant filed a “motion to alter or amend judgment.” The Defendant asked the Court to reconsider its previous order and requested that the trial court modify or amend the original sentencing order and direct that the Defendant be placed in the Special Alternative Incarceration Unit within the Department of Correction. In response to this motion, the trial court entered an order in which it stated it chose not to address the arguments concerning the timeliness of the Rule 35 motion because even if the motion was timely filed, it lacked merit. The Court concluded that it did not have the authority to order the Department of Correction to place the Defendant into its boot camp program and that it could only make recommendations that the Defendant be considered for the program. The Court also pointed out that the Department of Correction had the authority to determine the Defendant’s suitability or fitness for the program. The trial court therefore denied the Defendant’s motion to alter or amend the judgment. It is from this order that the Defendant has appealed.

Based upon our review of the record in this case, we conclude that the trial court properly determined that it did not have the authority to grant the Defendant the relief which he sought in his petition. Rule 35 of the Tennessee Rules of Criminal Procedure authorizes a trial court to reduce a sentence upon an application filed within 120 days after the sentence is imposed. It specifically provides that no extension shall be allowed on the time limitation. As noted by the trial court, even assuming the motion was originally filed on February 20, 2002, the date it was signed, it was untimely. We have also determined that the trial court was correct in its conclusion that the Court was without authority to order the Department of Correction to place the Defendant in its boot camp program.

We therefore grant the State’s motion and affirm the judgment of the trial court pursuant to Tennessee Court of Criminal Appeals Rule 20.

DAVID H. WELLES, JUDGE